IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1333 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA
and
Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NEW INDIA ASSURANCE CO.LTD.

Versus

VIDYUTKUMAR SHANTILAL SHAH

Appearance:

MR RAJNI H MEHTA for Petitioner
MR MD PANDYA for Respondent No. 1
MR BG PATEL for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA
and
MR.JUSTICE H.K.RATHOD

Date of decision:

CAV JUDGEMENT

[Per : D. C. Srivastava,J.]

The New India Assurance Co.Ltd., appellant has filed this appeal against the award dated 28.3.1988 rendered by the Motor Accident Claims Tribunal, Ahmedabad.

Brief facts are that the applicant respondent no.1 was walking on foot on the road from Paldi to Kocharab Ashram on 10.12.1983. The respondent NO. 2 was driving his auto rickshaw and was coming from behind. He was allegedly driving the auto rickshaw rashly and in a negligent manner. He knocked down respondent no.1 from behind as a result of which, he sustained serious injuries. The injured was taken to the hospital of Dr.Suman Shah. He filed the claim petition and claimed compensation of Rs.3,50,000/-. The Tribunal, however, allowed the petition partly and awarded compensation of Rs.2,95,000/- with 12% per annum interest from the date of the application till payment with proportionate costs.

In this appeal, a short point is involved for determination. Shri Rajni H. Mehta , learned counsel for the appellant has argued that the liability of the insurance company while insuring the auto rickshaw could not exceed Rs.50,000/- This fact was over looked by the concerned tribunal and the tribunal was in error in upholding unlimited liability of the insurance company. Learned counsel Shri B.G.Patel and Shri M.D. Pandya were heard. We have considered the provisions of S. 95(2) of the Motor Vehicles Act, 1939 and also the award of the tribunal as well as the insurance policy and motor tariff.

Xerox copy of the insurance policy shows that the appellant insured Bajaj Auto Rickshaw GRT 2260 and the insurance policy was valid on the date of accident. Premium paid is indicated in the insurance policy in the column of schedule of premium. It runs as under :

TP Basic Rs. 48/-
OD Rs. 80/-
IEV Rs. 104.50
LL to 3 pags. Rs. 090.00
1 Paid Driver Rs. 008.00

Rs. 370.00

Total Rs. 370.00 is wrongly mentioned. It should be 330.50 ps. It appears that as provided in the

premium motor tariff para 5, premium for riot and strike was not included. According to Shri Rajni H. Mehta, this premium comes to Rs. 47.50 ps. according to the tariff and in this way, total comes to Rs.378.00. The calculation submitted by Shri Rajni H. Mehta seems to be correct. What transpires from the calculations submitted by Shri Mehta and the Schedule of premium is that it can be said that Rs.378.00 only were charged and there is omission of premium for riot and strike and the total of Rs.378.00 was over typed as Rs. 370.00. It is, however, further clear that no additional premium was charged for making the insurance company liable to unlimited extent. The question is whether on this premium, the insurance company could be saddled with unlimited liability and also whether in view of the limits to liability mentioned in the insurance policy, the appellant insurance company can be saddled with unlimited liability ?

On the bottom of the insurance policy, endorsement numbers are given, limits of liability are also disclosed and the typed portion runs as under:

"Such amount as is necessary under Motor Vehicles Act, 1939. Limit of the amount of the company's liability undersection11-1(i) in respect of any one claim or series of claims arising out of one accident is unlimited. "

The question is whether these two recitals in the insurance policy are enough to saddle the insurance company with unlimited liability to pay compensation to the third party who was injured in this case. For determining this question, section 95 (2) (b) of the old Act has to be recapitulated. It provides that subject to the proviso to sub section (1), a policy of insurance shall cover any liability incurred in respect of any one accident upto the following limits, namely :-

(b) where the vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment,-

(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all;

(ii) in respect of passengers, a limit of fifteen thousand rupees for such individual passengers.

Thus, the statutory liability of the insurer

under section 95(2)(b)(i) in case of injury caused to the third party namely person other than the passengers carried for hire or reward will be limited to the extent of Rs.50,000/- only in all. The words "in all" are material and indicate that nothing more except Rs.50000/are to be paid by the insurance company in one accident where person other than the passenger carried for hire or reward received injuries.

In the case before us, the victim was obviously not a passenger in the auto rickshaw but he was a person other than the passenger and was walking on the road when he was knocked down by the offending auto rickshaw Thus, the statutory liability of the insurance company under section 95 (2) (b) (i) will not exceed Rs.50,000/-, in any case.

If this is so, then, the two clauses in the insurance policy showing limits of liability "as is necessary under the Motor Vehicles Act, 1939" will not mean that the liability will be unlimited or that the vehicle can be said to have been comprehensively insured.

Likewise, the word "unlimited" introduced in the insurance policy will not mean that there was an agreement between the insurer and the auto rickshaw owner that in the case of accident, the insurance company will be liable to unlimited extent to the third party.

We have given our thoughtful consideration to the words "such amount as is necessary under the Motor Vehicles Act, 1939". It will mean only the amount which is indicated in section 95(2)(b)(i) in the instant case. Likewise, the word "unlimited" would not mean that the insurance company is liable to pay compensation to unlimited extent.

This matter came up for consideration before the apex court in National Insurance Co. Ltd. versus Jugal Kishore and Others AIR 1988 Supreme Court 719. According to the apex court, even though it is not permissible to use the vehicle unless it is covered at least under an "act only" policy, it is not obligatory for the owner of a vehicle to get it comprehensively insured. In case, however, it is got comprehensively insured a higher premium than for an "act only" policy is payable depending on the estimated value of the vehicle. Such insurance entitles the owner to claim reimbursement of the entire amount of loss or damage suffered upto the estimated value of the vehicle calculated according to the rules and regulations framed in this behalf.

Comprehensive insurance of the vehicle and payment of higher premium on this score, however, do not mean that the limit of the liability with regard to third party risk becomes unlimited or higher than the statutory liability fixed under sub sec. (2) of sec. 95 of the Act. For this purpose, a specific agreement has to be arrived at between the owner and the insurance company and separate premium has to be paid on the amount of liability undertaken by the insurance company in this behalf. Likewise, if risk of any other nature for instance, with regard to the driver or passengers etc. in excess of statutory liability, if any, is sought to be covered, it has to be clearly specified in the policy and separate premium paid therefor. This is the requirement of the tariff regulations framed for the purpose. The apex court relied upon earlier decision in Pushpaben Parshottambhai versus Ranjit Ginning and Pressing Company Pvt. Ltd. AIR 1977 SC 1735. Interpreting the provisions of section 95(2) (b) of the Motor Vehicles Act, the apex court in National Insurance Co. versus Jugal Kishore (supra) held that the liability under the policy in that case was the same as the statutory liability contemplated by clause (b) of sub section (2) of section 95 of the Act namely Rs.20,000/- and the award against the insurance company in excess of the statutory liability was, therefore, not maintainable and was quashed. In the case before us, the statutory liability of the insurance company as against the third party under section 95(2)(b) (i) of the Motor Vehicles Act, 1939 will be confined to Rs.50,000/- only in all and not beyond that.

In the case of Pushpa versus Ranjit Ginning and Pressing Company Pvt. Ltd. (supra), the same view was taken by the apex court and at that time, the liability of the insurance company was Rs.50,000/- only. The award in excess of this amount was modified.

Thus, from the above two decisions of the apex court, it flows as under:

(1) The motor vehicle will not be used by the owner unless it is covered at least "act only" class. policy.
(2) It is not obligatory for the owner of the vehicle to get it comprehensively insured.
(3) If the owner chooses to get the vehicle comprehensively insured, higher premium than that for "act only" is payable which depends upon the estimated value of the vehicle.
(4) In case of comprehensive insurance, owner of the

vehicle can claim reimbursement of the entire amount of the loss or damage suffered to the vehicle upto the estimated value of the vehicle as calculated according to the rules and regulations framed in that behalf.

(5) The comprehensive insurance of the vehicle and payment of higher amount on this score do not mean that the limit of the liability with regard to third party risk becomes unlimited or higher than the statutory liability fixed under sub section (2) of sec.95 of the Act.

(6) If any other risk is intended to be covered with regard to the driver or passengers in excess of the statutory liability, it has to be clearly specified in the policy and separate premium is required to be paid therefor.

In the case before us, what transpires from the schedule of premium as corrected by Shri Rajni H. Mehta, learned counsel for the appellant is that no additional premium or higher premium was charged by the insurance company. The contention to the contrary raised on behalf of the respondents is incorrect and cannot be accepted. It was incorrectly contended that the tribunal has observed that additional premium was paid in the instant case. Our attention was drawn to paragraph 22 of the judgment of the tribunal but this observation is nothing but quotation from the case decided by the Delhi High Court in Smt. Usha Sahgal and other vs. Shri Chhote and others 1985 (1) ACJ 377. When the insurance policy before us indicates that only premium according to tariff for "act only" class was charged and no additional premium was charged for undertaking unlimited liability,it would be incorrect to say that the insurance company is liable to unlimited extent. In this back ground, mere typing of the word 'unlimited' will not render the policy comprehensive nor the liability unlimited. No agreement between the owner and the insurance company was alleged or proved before the tribunal under which it can be said that the insurance company, the appellant undertook unlimited liability to pay compensation to the third party who would be involved in the accident. The payment of premium at ordinary rate will not entitle the third party to claim unlimited compensation from the insurance company, the appellant. The words "such amount as is necessary under the Motor Vehicles Act, 1939" incorporated in the policy have direct reference to the provisions of section 95(2)(b)(i) of the Motor Vehicles Act, 1939. In our opinion, it was an "act policy only" and not that the vehicle was comprehensively insured. Obviously no higher premium was

paid by the owner of the vehicle. As such, the liability of the appellant cannot exceed Rs.50,000/-. The award in excess of Rs.50,000/- against the appellant insurance company is, therefore, bad in law. The award has, therefore, to be modified.

The appeal in the aforesaid circumstances succeeds and is hereby allowed. The claimants shall get a sum of Rs. 50,000/-together with 12% per annum interest from the date of application till payment and proportionate cost from the appellant New India Assurance Company Ltd. who was the opponent NO. 2 before the tribunal. Since the appeal has been finally disposed of, modified amount of award shall be payable to the claimant respondent no.1 immediately. If the amount has not been deposited so far, it shall be paid to the respondent No.1 immediately after the deposit is made. In that event, deposit be made within three weeks.

10.7.2000 (D.C.Srivastava,J.)

(H.K.Rathod,J.)

Vyas